



Court OKs Use of Computer-Assisted Review of Electronically Stored Information

By Barry M. Kazan, Partner at Thompson Hine. Reprinted with permission.

Overview

In *Da Silva Moore v. Publicis Groupe*, a federal court for the first time approved defendants' use of computer-assisted review, a/k/a predictive coding, and acknowledged that it can be a faster, more reliable and cost-effective method for document review and production. Predictive coding, which takes advantage of recent advances in artificial intelligence, enables faster and less costly document review than other available technologies.

Computer-Assisted Review Explained

In the court's decision, United States Magistrate Judge Andrew J. Peck of the Southern District of New York described his understanding of computer assisted review as follows:

By computer-assisted coding, I mean tools ... that use sophisticated algorithms to enable the computer to determine relevance, based on interaction with (i.e., training by) a human reviewer. Unlike manual review [a/k/a linear review], where a review is done by the most junior staff, computer-assisted coding involves a senior partner (or small

team) who review and code a "seed set" of documents. Magistrate Peck further describes the process as a continual source of refinement by which the seed set is used and the computer and the reviewer work together to create a predictive model applied to large set of documents. The goal of the process is to identify responsive documents that are appropriate for further review and non-responsive or less-responsive documents that should be excluded from further review.

As Magistrate Peck explained, review of electronically stored information (ESI) has evolved from searching data sets using simple keywords to using algorithms that return documents containing keywords and other documents containing words that frequently appeared together with keywords. Predictive coding takes litigation review software further by "recall [ing] documents that have similar concepts to those in a set of identified documents even if the same words aren't used in the two documents."

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Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Mobile Sync from Fastcase!

By: Julie Koehne

Fastcase's mobile legal research app can now be synchronized with your law library subscription benefit. (The App can be downloaded from the iTunes store or from the Fastcase website at <http://www.fastcase.com>)



To sync your accounts follow the instructions below:

Log into the law library's website at <http://www.hamilton-co.org/cinlawlib/intra/login.asp>

Open Fastcase by clicking here.

Once logged in, scroll over the **Options** menu and select **Mobile Sync**.

Once on the Mobile Sync page, you will be prompted to enter an email address. This will be your username for logging in using the mobile app. When you've entered your email address, click **Go**. Fastcase will send an email to this address to confirm that you own it. The email will contain a link that you must click to complete the sync process.

Tip: If you already use Fastcase for the iPhone or Fastcase for the iPad and are syncing your accounts, please use the email address associated with your pre-existing app account.

Tip: If you are creating a new mobile app account, you will be prompted to enter a password and to confirm your first and last name. After that, just click **Finish**, and your existing desktop account will be linked to your new mobile account.

Tip: If you have already established a mobile app account, simply click the link in the email, and your two accounts will automatically link together.

What We're Blogging About

If you haven't looked at the Law Library's blog recently, please visit. You may want to subscribe to the feed to help you stay up to date on legal issues, especially those facing Ohio. We also post news about upcoming events, including CLEs, at the Law Library. <http://www.hamilton-co.org/cinlawlib/blog/default.asp>

Here are some of the recent topics about which Chuck Kallendorf has been blogging:

- State Concealed Carry Initiatives
- Proposed Ohio Supreme Court Attorney Disciplinary Rule Changes
- Twitter Lawsuits
- Ohio Public Defender Proposals
- Cybersecurity Act of 2012

CLE Information

Not sure how many hours you need for 2012? Looking for a CLE seminar in the greater Cincinnati area?

You can find this and more at the Ohio Supreme Court website's CLE section- <http://www.supremecourtfohio.gov/AttySvcs/CLE/default.asp> and the Kentucky Bar Association website- <http://www.kybar.org/> (click the CLE drop down menu)

From these pages you can check your transcript, read the CLE rules, search for an accredited CLE activity, find a form, or contact the CLE staff.

Free Spring CLEs

Due to increased attendance, registration in advance is now required for all Law Library CLEs.

To register, call 946-5300 or via email at masweeney@cms.hamilton-co.org.

Westlaw

Tuesday, April 3, 2012

Noon-1pm

Westlaw Search Tips & Tricks

Approved for 1.0 hour of general Ohio CLE credit.

Free to library subscribers, \$35 for non-subscribers.

Researching Private Companies

Thursday, May 17th, 2012

2:00 - 3:00 pm

Presented by Shannon Kemen of UC

Approved for 1.0 hour of general CLE in Ohio and Kentucky.

Free to subscribers; \$35 for non-subscribers.

Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on April 5, 2012 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

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The Da Silva Moore Case

In the case before the court, plaintiff Monique Da Silva Moore, a former public relations executive, and four other female plaintiffs sued Publicis Groupe, an international advertising conglomerate, and its U.S. public relations subsidiary, MSL Group, for gender discrimination under Title VII and other statutes. Among the other claims were Equal Pay and Fair Labor Standards Act claims that the plaintiffs sought to bring as collective and class actions, seeking \$100 million in damages, back pay and attorneys' fees. Based on the court's prior rulings, defense counsel successfully limited discovery to 30 rather than 44 custodians for the first phase. However, even with just 30 custodians, the relevant data set, almost entirely email correspondence, comprised more than 3 million documents. The defendants proposed the use of predictive coding to conduct document review, and the parties, with the court's guidance, developed an ESI protocol.

The Da Silva Moore ESI Protocol

The Da Silva Moore ESI protocol calls for a random sampling of nearly 2,500 of the more than 3 million documents to be manually reviewed for relevant documents, constituting the initial seed set that will be used to train the predictive coding software. The defendants agreed to provide the seed set and the defendants' issue coding (the parties had agreed to eight issue tags) to the plaintiffs for their review and also agreed to modify the coding based on the plaintiffs' suggestions. Additionally, the defendants coded documents using "judgmental sampling" to further train the predictive coding software. This step involves keyword and Boolean searches run against the entire data set with the top ranking results manually reviewed by the parties. Next, the entire data set will undergo seven "iterative" rounds "to stabilize the training of the software." Each iterative round requires the return and manual review of 500 docu-

ments for each of the issue tags. Finally, after the seventh iterative round, the defendants will review another random sample set of nearly 2,500 documents from those documents that the predictive coding software deems irrelevant to ensure proper coding. The plaintiffs will then be entitled to review all documents reviewed by the defendants (except privileged documents), including those deemed irrelevant.

Although the court was careful to note that predictive coding is not necessarily the best ESI review method for every case, the bottom line for this case is that the parties only will have to review from 10,000 to 15,000 documents to train the software to code properly.

Factors Favoring the Use of Predictive Coding

In endorsing the ESI protocol, the court cited Fed. R. Civ. P. 1, which requires construing the Federal Rules of Civil Procedure "to secure the just, speedy, and inexpensive determination of every action and proceeding," and 26(b)(2)(C), which embodies the proportionality principle and requires the court to consider, among other things, the burden and expense of the proposed discovery versus the benefits and needs of the case. As the court noted, "the idea is not to make this perfect, it's not going to be perfect. The idea is to make it significantly better than the alternatives without nearly as much cost." The court repeatedly indicated that this method may not be suitable in every case involving ESI. Several important factors drove the court's decision in the Da Silva case:

- The parties' agreement to use predictive coding
- The size of the entire data set (more than 3 million documents)
- The accuracy of predictive coding compared to other available methods
- The Rule 26(b)(2)(C) proportionality principle

- "[T]he transparent process proposed by [Defendants]"

Implications

The court's adoption of predictive coding in this case sets a framework for using computer-assisted technology in cases involving large-scale ESI. If applied correctly, computer-assisted review can improve cost and time savings and increase accuracy of responsiveness in high-volume data cases. For more information, please contact:

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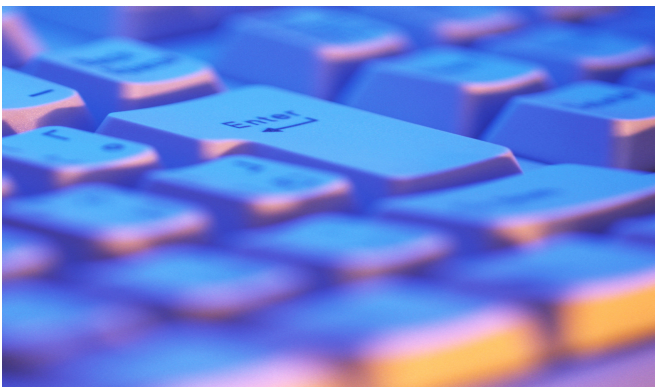
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Online Tax Resources

April 17 is coming up fast! Did you know that the Law Library has a variety of online tax resources for our subscribers? Here is a sampling of what we have available. If you have any questions about how to access these, or any other library resources, please contact us.

On Site Access

BNA and Accounting Center

US Income Portfolios

Estates, Gifts and Trusts portfolios

State Tax Portfolios

Federal and State Tax Cases

Tax Forms, Tables, Charts and Lists

Tax Management Weekly Report

Tax Management Memorandum

Estates, Gifts and Trusts Journal

Internal Revenue Code

Treasury Regulations

CCH

State Tax Reporters

Multistate Corporate Tax Guide

US Master Tax Guide

Standard Federal Tax Reporter

Tax Research Consultant

Federal Excise Tax Reporter

IRS Letter Rulings & IRS Positions

IRS Penalties Handbook

State and Federal Tax Archives

Remote Access

CCH Newsletters

Federal Taxes Current Features and Journals

State Tax Current Features and Journals

ALI-ABA

Practical Tax Lawyer

The library also offers bi-monthly topical updates on tax law. To subscribe, contact Laura Dixon-Caldwell at LDixonCaldwell@cms.hamilton-co.org

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: Collection of Income Taxes

David E. Gebhart is our next speaker in the *You and the Legal System Series* for the public. Mr. Gebhart will address Collection of Income Taxes on Friday, April 20 2012 at 12:00 noon at the Law Library. The program will focus on:

- Magic Words to use when dealing with the IRS
- Inside Form 433A
- IRS Liens – Not the end of the world
- The IRS Totem Pole
- The right hand and the left hand
- Meeting Deadlines
- Power of Attorneys, CPAs and commercial tax preparers

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513-946-5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System Series*: Veterans Legal Issues on May 18. Details Forthcoming.



Evidence Resources

Law Library patrons have access to a variety of resources on evidence. If you would like to use one of the resources listed, just call and we'll hold it for you. If you have questions about access to the Law Library's online resources, just ask a librarian for guidance.

Books

Cell Phone Forensics
KFO8947.5.C45 2011

Discovery Strategy: Finding the Smoking Gun in Ohio
KFO537.A75 D573 2010

Federal Rules of Evidence Manual: a Complete Guide to the Federal Rules of Evidence
Stephen A. Saltzberg, Michael M. Martin, Daniel J. Capra
KF8935.S2 2011

Giannelli Evidence (Ohio)
Paul C. Giannelli
KFO540.G5 2011

Giannelli Rules of Evidence Handbook (Ohio)
Paul C. Giannelli
KFO540.G52 2011

Indiana Trial Evidence Manual
James Alexander Tanford
KFI3540.T36 2010

Kentucky Evidence Law Handbook
Robert G. Lawson
KFK1740.L35 2012

Medical Evidence
Thomas H. Quinn, Terrence R. Quinn, Robert h. Quinn
KF8964.Z9 Q57 2011

The New Wigmore: Evidence of Misconduct and Other Similar Events
David P. Leonard
KF8935.W63 2009

New Wigmore: Expert Evidence
David H. Kaye
KF8935.W64 2012

New Wigmore: Evidence: Impeachment and Rehabilitation
David P. Leonard
KF8935.W61 2012

Scientific Evidence
Paul C. Giannelli
KF8961.G53
2011

Trial Evidence for the Ohio Practitioner
KF540.Z9 T75 2011

Trial Technology Workshop
KF8915.T73 2011

Understanding Evidence
Paul C. Giannelli
KF8935.G52 2009

Weissenberger's Federal Evidence
Glen Weissenberger
KF8935.W42 2011

Weissenberger's Ohio Evidence Treatise
Glen Weissenberger
KFO540.W441 2011

Online Resources

Aspen Evidence Library*

Forms & Checklists

Wigmore on Evidence

Scientific Evidence and Experts Handbook

Destruction of Evidence

Evidence: Practice Under the Rules

*Can be accessed remotely by library subscribers

Upcoming Events

April 3: West CLE: Search Tips

April 5: Law Library Resources Board Meeting

April 20: You & the Legal System: Taxes

May 17: CLE: Researching Private Companies :



April 2012 Law Library Newsletter

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